the administration of the property of a bankrupt have regard to any directions that may be given by resolution of the creditors at any general meeting and that the Official Assignee shall summon a meeting of creditors whenever requested in writing so to do by one-fourth in value of the creditors. He also submitted that certain information set forth in the petitioner's affidavit had been obtained by petitioner only a week or so before and had not been given to the Official Assignee for action and that this petitioner-creditor had acted without reference to the other 31 creditors.

Gordon-Smith, Ag. J.A.—This was an application by Motion on behalf of a creditor for an Order calling on the Official Assignee to take all necessary measures to get in and realize for the benefit of the creditors certain alleged assets. It was supported by an affidavit of the 28th October, 1939, by the Creditor.

The alleged assets were:—

(1) the debtor's interest under the Will of his father;

(2) the interest of the debtor (if any) in the estate of his mother; and

(3) proceeds of sale of the debtor's motor car.

At the conclusion of the argument, I dismissed the application with costs. My reasons for so doing were as follows:

Although there may be an inherent right in a creditor to move the Court for an order that the Official Assignee shall perform his duties, yet these duties are statutory and are contained in Part IV and elsewhere, of the Bankruptcy Enactment and specific provisions are made in section 78 as to the discretionary powers of an Official Assignee and for the control thereof. A creditor may require a meeting of creditors to be summoned at which these discretionary powers may be considered and an Official Assignee is bound to carry out any directions given by or at such meeting or, if he disagrees with such directions, he may himself apply to the Court for directions.

The creditor in question, instead of acting under this section, has rushed into Court because he disagrees with proposed or suggested action, or want of action by the Official Assignee. If aggrieved at any such action or want of action, he should have acted under this section.

As regards the alleged assets specified, the Official Assignee stated that prior to this application, he had had no knowledge or any information as to the debtor's motor car, and similarly he informed the Court that the debtor's mother had died about 25 years ago leaving, as far as he was then aware, no estate. As regards the debtor's interest under his father's Will, this Will was executed subsequently to the Wage-Earner's Administration Order having obviously been made in full knowledge thereof as specific provisions are made to protect the interests of beneficiaries in the event of bankruptcy. In actual fact there is a gift over, of a monthly allowance to the debtor, in the event of his bankruptcy, a contingency which had already happened. There is a contingent legacy to the debtor, of $1,000, payment of which is postponed for 10 years and the debtor may eventually and after a lapse of 20 years, become entitled to a share in the estate. There may be some realizable value in these contingent interests and if so, it is open to the creditors to direct the Official Assignee in regard thereto, under the section I have quoted.

Application dismissed with costs.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
November 6, 1939.

ABDUL RAHMAN v. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 80 of 1939]

Evidence Enactment, Ss. 114 (b), 133—accomplice —meaning of—desirability for corroboration—Summary trials—Magistrate's duty.

The term "accomplice" includes all persons who have been concerned in the commission of an offence, whether they are concerned as principals or merely as accessories.

Once it is established that a person is an accomplice, it is the duty of the trial magistrate to consider the desirability for corroboration of his evidence. If the magistrate omits to address his mind to the necessity for corroboration, any conviction based on the uncorroborated evidence of the accomplice is liable to be quashed.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

T. V. Brodie for the Public Prosecutor. The witnesses were not accomplices and there was nothing in the evidence to show that they were abetting or accessory to the offence of theft charged against the accused. It was only a matter of suspicion. In any case under Section 133 Evidence Enactment, a conviction based on the uncorroborated testimony of an accomplice is not illegal. Section 114 (b) requiring corroboration does not say that the Court must presume an accomplice to be unworthy of credit, but that it may presume it, it being for the trial court in all cases to decide whether it believes that accomplice without corroboration or not. In this case the magistrate found that he believed the witnesses. Though the magistrate did not apparently consider whether those witnesses were accomplices or not in name, he must be taken to

have been aware of all the circumstances from which a suspicion of their being accomplices arose and if in spite of knowledge of those circumstances, he believed the witnesses then he was entitled under Section 133 of the Evidence Enactment to convict even though there was no corroboration.

Cur. Adv. Vult.

Murray-Aynsley, J.—In this case the Appellant was unrepresented. The only point that arises from the record is whether certain witnesses for the prosecution were accomplices, and if they were, whether the conviction can stand.

In the present case the witnesses for the prosecution were persons who were engaged on a lorry which according to their story was hired by the Appellant, a watchman on a mine, to convey at the hour of 3 a.m., certain iron piping to the premises of a receiver in Ipoh.

The circumstances are such that I think these persons must have known very well that they were engaged in a dishonest transaction; it does not show that they were thieves equally with the accused, who was charged with the theft of this iron piping.

Certain Indian cases appear to narrow the meaning of the term "accomplice" to a person who is guilty of the same offence as the accused.

I think that this is wrong; I think that the principle on which the rule relating to accomplices is based would make the evidence of an accessory as much subject to suspicion as that of a principal. I think therefore that these persons should have been treated as accomplices. That being so, what is the position of their evidence according to the law in force in the F.M.S.

There are two provisions in the Evidence Enactment on the subject; they are Sections 133 and 114 (b).

The first of these merely re-establishes the undoubted rule of English law. Section 114 (b), I think, was intended to set out the position according to English law as it was understood at the time, but owing to the fact that all the cases in England are cases where trial has been with a jury, the English authorities have resolved themselves into decisions as to what is the proper direction to give to a jury in such cases. The position there is that a warning as to the desirability for corroboration must be given. If the warning is not given or if the jury are directed that something is corroboration when it is not, there is a misdirection. Even if the proper warning is given the Court of Criminal Appeal will scrutinize convictions closely to ascertain if they are justifiable having regard to all the circumstances of the case. In actual practice the warning given is almost universally sufficient to secure the acquittal of an accused person. The practical effect of the present position is that what was formerly a mere rule of practice has become equivalent to a rule of law. Here the application of the rules laid down in the Evidence Enactment is more difficult. Where a case is decided by a Magistrate or Judge without the intervention of a jury any question of direction or warning is inapplicable. I think that in the first case any Court reviewing such a decision should satisfy itself that the Judge or Magistrate considered the matter in the light of the fact that the witnesses were accomplices, and secondly that there were circumstances to justify the conclusion that the accomplice is not "unworthy of credit, unless corroborated in material particulars."

Here, there is nothing in the Grounds of Judgment to suggest that the learned Magistrate considered the question of the desirability for corroboration, nor, I think, is there anything in the facts of the present case which would justify dispensing with it.

In my opinion the conviction should be quashed.

Conviction quashed.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
December 14, 1939.

PUBLIC PROSECUTOR v. JESSA SINGH.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 85 of 1939]

Criminal Procedure—summary trial—close of case for prosecution—prima facie case established—duty of Magistrate.

Where in a summary trial a **prima facie** case has been made out against the accused, it is not competent for the trial Magistrate at the close of the case for the prosecution to acquit the accused. It is not part of the duty of the Court to anticipate possible defences at that stage of the proceedings and then to act as though those defences have been established.

MAGISTRATE'S CRIMINAL APPEAL.

T. V. A. Brodie, Assistant Legal Adviser, for the Public Prosecutor (Appellant). This was purely a question of fact—whether there was a case against the accused. It had been proved that the accused had removed metals on the 19th September 1939 and it had been proved that neither the complainant nor the original owner of the metals had given him permission to do so. His act was *prima facie* theft and called for some explanation from him.

Respondent in person.